

REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS # 451.00-004

STATE AGENCY NAME : Tennessee Department Of Transportation

SERVICE CAPTION : Operation of a ferry boat across the Cumberland River on SR46 at Cumberland City, TN.

CONTRACT # FA-04-15321-00

PROPOSED AMENDMENT # 2

CONTRACTOR : Two Rivers Excursions, Inc.

CONTRACT START DATE : July 1, 2003

CURRENT, LATEST POSSIBLE END DATE :
(including ALL options to extend) June 30, 2008

CURRENT MAXIMUM LIABILITY : \$691,062.75

LATEST POSSIBLE END DATE WITH PROPOSED AMENDMENT :
(including ALL options to extend) with this option-June 30, 2006; with all options-June 30, 2008

TOTAL MAXIMUM COST WITH PROPOSED AMENDMENT :
(including ALL options to extend) with this option to amend - \$1,063,182.75;
all options \$1,807,430.00

APPROVAL CRITERIA :
(select one) ☒ use of Non-Competitive Negotiation is in the best interest of the state

☐ only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of the proposed additional service and amendment effects :

Amendment Two would extend the contract for the third year of five years. It will also allow for a rate increase of \$6.00 per hour, which would change the hourly rate from \$76.50 to \$82.50. Letter from Two Rivers Excursions, Inc. is attached.

(2) explanation of need for the proposed amendment :

The state wishes to extend the contract as allowed for the third year. The Contractor has requested an hourly operation increase due to fuel, lubricant and oil prices having increased by approximately 54% and due to insurance premiums having increased by over 26% over the previous year. Contractor expenses have also increased in salaries, payroll taxes and maintenance. Just in one year's time, diesel fuel has risen due to unrest in the middle east and other factors. The Lowest price for diesel in 2003 was \$1.064 with the Highest price reached last month (November) of \$1.813.

(3) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Captain H. Paul Richie, P O Box 602, Clarksville, TN 37041

(4) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(5) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(6) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

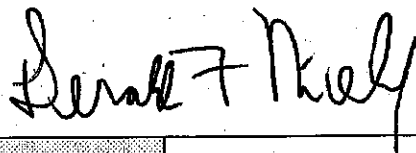
The RFP process resulted in only one bid. Prior to this contract, this vendor had a five year contract. The State is not aware of anyone else who could bid on this. Names of six (6) possible bidders were received from the Coast Guard. Of these vendors, none responded but Two Rivers. Companies receiving packets were American Commercial Barge, (no bid); Ingram Barge Co. (no bid); Brent Towing (no bid); Tennessee River Towing (no bid); Southern Towing Co., (no bid); Serodino (no bid); Ferguson Harbor Service (no bid); Claughton Marine Service (out of business), and Two Rivers. A special license which exceeds a towing license is required to operate a ferry which carries people.

(7) justification of why the F&A Commissioner should approve a Non-Competitive Amendment :

This ferry service acts as the only connector of a state highway and serves Houston, Humphreys, Montgomery and Stewart Counties. If the ferry did not operate, citizens in these counties would have to drive more than 100 miles per day to get to their places of work, doctor facilities, etc. Employees at TVA, Cumberland City, the plants at New Johnsonville and Fort Campbell Army base, farmers and businesses in the surrounding counties would suffer greatly. Small rural businesses as well as Stewart-Houston County Industrial Park would suffer due to lost business, as well as farmers and the elderly which use the ferry on a regular basis. During farming season the daily average is well over 175 vehicles and tractors per day.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)



SIGNATURE DATE:

12/21/04

MEMORANDUM

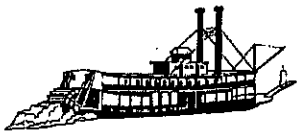
TO: Chris Eaton, Fiscal Review Committee

FROM: Brenda Waldron, ^{DP}Director of Contract Review
Department of Transportation

DATE: December 21, 2004

SUBJECT: Review of Non-Competitive Amendment

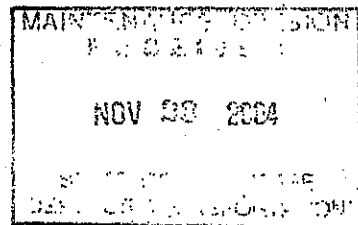
The service provided in the attached request is for operation of a ferry over the Cumberland River on State Route 46. This service was competitively bid through the RFP process, but only one bidder responded and was awarded the contract. We are sending this request for non-competitive review because the vendor has requested an increase in his hourly operating rate. Details are provided in the request: non competitive amendment. If you have any questions, feel free to call me at 741-1645.



Two Rivers Excursions, Inc.

P.O. Box 602 Clarksville, TN 37041

To: Mr. Carl Cobble
From: Capt. H. Paul Ritchie
Date: November 19, 2004
Re: Cumberland City Ferry hourly increase



Dear Mr. Cobble:

Listed below are the figures requested. Please call 931-801-2306 if any further information is needed. Thank you for your assistance in this matter.

Cumberland city ferry projected operating statement for 12 months based on 4510 - hours per year (five 12-1/2 hour and two 12-hour days per week)

<u>Expenses</u>	<u>Per hour</u> <u>2003</u>	<u>Per hour</u> <u>2004</u>	<u>Increase/</u> <u>decrease</u>
Salaries	\$46.33	\$48.74	\$2.41
Payroll taxes	\$ 8.18	\$ 8.60	\$.43
Fuel & lube	\$ 3.70	\$ 5.70	\$2.00
Insurance	\$ 4.70	\$ 5.95	\$1.25
Maintenance	\$ 2.35	\$ 2.50	\$0.15
Miscellaneous	\$ 2.50	\$ 2.50	\$0.00
Overhead	<u>\$ 2.25</u>	<u>\$ 2.25</u>	<u>\$0.00</u>
Expenses	\$70.00	\$76.24	\$ 6.24 (expense increase)
Profit	<u>\$ 6.50</u>	<u>\$ 0.26</u>	<u>\$(6.24)</u> (profit decrease)
Totals	\$76.50	\$76.50	\$ 6.00 (increase requested)

Fuel, lube & oil prices increased by (54%) and insurance premiums have escalated by (26%). The Cumberland City Ferry averages over 130 vehicles per day.

The ferry is an invaluable asset to the citizen's, local businesses, farmer's and workers in the counties of Houston, Humphrey, Montgomery and Stewart. The employee's at many plants, TVA @ Cumberland City, the plants @ New Johnsonville and Fort Campbell Army base, farmers and businesses in the surrounding counties would suffer greatly. A large number of workers would have to drive more than 100 miles per day if the ferry was not in operation. The local communities, small rural businesses as well as the Stewart/Houston County Industrial park would suffer a great deal more in lost business if the ferry were not operational. Farmers and the elderly utilize the ferry on a regular basis. During the height of the farming season, our daily average will be well over 175 vehicles and tractors per day. Many families rely on the ferry operating daily.

Two Rivers Excursions, Inc. presently operates at 99.8% of our scheduled time. Thank you for allowing our company the opportunity to give the absolute best and safest service to the people who ride T.D.O.T's ferry at Cumberland City.

C O N T R A C T S U M M A R Y S H E E T

RFS Number: 451.00-004		Contract Number: FA-04-15321-00	
State Agency: Transportation		Division: Maintenance	
Contractor		Contractor Identification Number	
Two Rivers Excursions, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	621286544-00
Service Description			
Operation of a ferry boat across the Cumberland River on SR46 located at Cumberland City, TN, Stewart County			
Contract Begin Date		Contract End Date	
July 1, 2003		June 30, 2006	
Allotment Code	Cost Center	Object Code	Fund
451.00	88	089	21
		<input type="checkbox"/> on STARS	
FY	State Funds	Federal Funds	Total Contract Amount (including ALL amendments)
2004	\$346,009.50		\$346,009.50
2005	\$345,053.25		\$345,053.25
2006	\$372,120.00		\$372,120.00
	\$1,063,182.75		\$1,063,182.75
CFDA #	Check the box ONLY if the answer is YES:		
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name: Jennifer Herstek Address: 8 th Floor, JK Polk Bldg, Nashville, TN Phone: 741-2498		Is the Contractor a VENDOR? (per OMB A-133) <input checked="" type="checkbox"/>	
		Is the Fiscal Year Funding STRICTLY LIMITED?	
Procuring Agency Budget Officer Approval Signature		Is the Contractor on STARS? <input checked="" type="checkbox"/>	
		Is the Contractor's FORM W-9 ATTACHED?	
		Is the Contractors Form W-9 Filed with Accounts? <input checked="" type="checkbox"/>	
COMPLETE FOR ALL AMENDMENTS (only)		Funding Certification	
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.
END DATE →	June 30, 2004	June 30, 2006	
FY: 2004	\$346,009.50		
FY: 2005	\$345,053.25		
FY: 2006		\$372,120.00	
FY:			
Total:	\$691,062.75	\$372,120.00	

AMENDMENT TWO**TO FA-04-15321-00****BETWEEN THE STATE OF TENNESSEE, TENNESSEE DEPARTMENT OF TRANSPORTATION AND****TWO RIVERS EXCURSIONS, INC.**

This CONTRACT, by and between the State of Tennessee, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the State, and TWO RIVERS EXCURSIONS, hereinafter referred to as the CONTRACTOR, is hereby amended as follows:

1. Delete Section B.1. in its entirety and insert the following in its place:

Contract Term: This Contract shall be effective for the period commencing on July 1, 2003 and ending on June 30, 2006. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

1. Delete Section C.1. in its entirety and insert the following in its place:

Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million, Sixty Three Thousand, One Hundred and Eighty-Two Dollars and Seventh Five Cents (\$1,063,182.75). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit and all other direct and indirect costs incurred to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. Delete Section C.3. in its entirety and insert the following in its place:

Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rate:

SERVICE	AMOUNT
Ferry Boat Operation	\$82.50 Hourly Rate

The Contractor shall not be compensated for travel time to the primary location of service.

In the event that operations are halted due to equipment breakdown other than maintenance or required repairs as defined, high water, fog or some other force or major fact or, the Contractor shall be compensated at a Stand-by Unit Rate of 50% of the hourly rate for the normal hours of operation during the first 38 continuous hours subsequent to the start of the cessation of operations. After the initial 48 hour period, the Contractor shall not be due any additional compensation until operations are resumed.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, be submitted typed on company letterhead and signed by the same company official executing the Contract, include a list the dates and number of hours of operation and dates and hours of non-operation and how the requested compensation was arrived at.

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

TWO RIVERS EXCURSIONS, INC.:

Captain H. Paul Richie

Date

TENNESSEE DEPARTMENT OF TRANSPORTATION:

Gerald F. Nicely, Commissioner

Date

General Counsel

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CONTRACT SUMMARY SHEET

RFS Number:	451.00-004	Contract Number:	FA-04-15321-00 ⁰¹
State Agency:	Transportation	Division:	Maintenance
Contractor		Contractor Identification Number	
Two Rivers Excursions, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	621286544-00

Service Description

Operation of a ferry boat across the Cumberland River on SR46 located at Cumberland City, TN, Stewart County

Contract Begin Date				Contract End Date			
July 1, 2003				June 30, 2005			
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code	
451.00	88	089	21	<input type="checkbox"/> on STARS			

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
2004	\$346,009.50				\$346,009.50
2005	\$345,053.25				\$345,053.25
	\$691,062.75				\$691,062.75

CFDA #		Check the box ONLY if the answer is YES:	
State Fiscal Contact Name: Jennifer Herstek Address: 8 th Floor, JK Polk Bldg, Nashville, TN Phone: 741-2498		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
		Is the Contractor a VENDOR? (per OMB A-133)	x
		Is the Fiscal Year Funding STRICTLY LIMITED?	
		Is the Contractor on STARS?	x
Procuring Agency Budget Officer Approval Signature 		Is the Contractor's FORM W-9 ATTACHED?	
		Is the Contractors Form W-9 Filed with Accounts?	x

COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.
END DATE →	June 30, 2004	June 30, 2005	
FY: 2004	\$346,009.50		
FY: 2005		\$345,053.25	
FY:			
FY:			
FY:			
Total:	\$346,009.50	\$345,053.25	

MAR 19 2004

RECEIVED
 2004 MAR 15 AM 7:49
 COMPTROLLER'S OFFICE
 OFFICE OF
 MANAGEMENT SERVICES

**AMENDMENT ONE
TO CONTRACT FA-04-15321-00**

**BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
AND TWO RIVERS EXCURSIONS, INC.**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the State, and Two Rivers Excursions, Inc. hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section B.1. in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2003 and ending on June 30, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. Delete Section C.1. in its entirety and insert the following in its place:

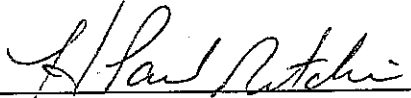
C.1. Maximum Liability: In no event shall the maximum liability of the State under this Contract exceed Six Hundred Ninety One Thousand Sixty Two Dollars and Seventy Five Cents (\$691,062.75). The Payment Rates in Section C.3. shall constitute the entire compensation due for Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.


The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.


IN WITNESS WHEREOF:

TWO RIVERS EXCURSIONS, INC.:


H. Paul Richie Date 2/12/04

TENNESSEE DEPARTMENT OF TRANSPORTATION:


Gerald F. Nicely, Commissioner Date 3/3/04

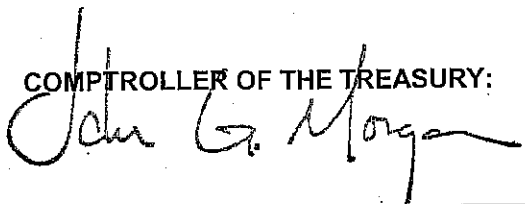

Sara E. Rosson, General Counsel Date 2/26/04

APPROVED:

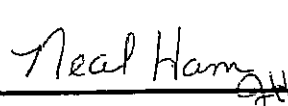
DEPARTMENT OF FINANCE AND ADMINISTRATION:


M. D. Goetz, Jr., Commissioner Date 3/10/04

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury Date 3/15/04

CONTRACT SUMMARY SHEET

RFS Number: 451.00-004		Contract Number: FA-04-15321-00	
State Agency: Transportation		Division: Maintenance	
Contractor		Contractor Identification Number	
Two Rivers Excursions, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	621286544-00
Service Description			
Operation of a ferry boat across the Cumberland River on SR 46 located at Cumberland City, TN, Stewart County			
Contract Begin Date		Contract End Date	
July 1, 2003		June 30, 2004	
Allotment Code	Cost Center	Object Code	Fund
451.00	88	089	21
		<input type="checkbox"/> on STARS	
		N/A	
		N/A	
FY	State Funds	Federal Funds	Interdepartmental Funds
2004	346,009.50		
Total:	346,009.50		
CFDA #		Check the box ONLY if the answer is YES:	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name:	Jennifer Herstek	Is the Contractor a VENDOR? (per OMB A-133)	X
Address:	8 th Floor, J.K. Polk Bldg., Nashville, TN	Is the Fiscal Year Funding STRICTLY LIMITED?	
Phone:	741-2498	Is the Contractor on STARS?	X
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?	
		Is the Contractors Form W-9 Filed with Accounts?	X
		Funding Certification	
COMPLETE FOR ALL AMENDMENTS (only)		Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.	
	Base Contract & Prior Amendments	This Amendment ONLY	
END DATE →			
FY:			
FY:			
FY:			
FY:			
FY:			
Total:			

JUL 11 2004

OFFICE OF ACCOUNTS

MANAGEMENT SERVICES
30251110
301230 00717081400

10-21-04 1-700 000

RECEIVED

**CONTRACT
BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
AND
TWO RIVERS EXCURSIONS, INC.**

This Contract, by and between the State of Tennessee, Tennessee Department of Transportation, hereinafter referred to as the "State" and Two Rivers Excursions, Inc. hereinafter referred to as the "Contractor," is for the provision of operation of a ferry boat across the Cumberland River as further defined in the "SCOPE OF SERVICES." The ferry boat is owned by the State and is located at Cumberland City, Tennessee in Stewart County on State Route 46.

The Contractor is a for-profit corporation. The Contractor's address is: P. O. Box 602, Clarksville, Tennessee, 37041.

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

A.1. The Contractor shall operate the ferry as follows:

Monday thru Friday – 5:30 a.m. to 6:00 p.m. local time

Saturday and Sunday – 6:00 a.m. to 6:00 p.m. local time

The contractor shall operate the ferry 365 days per year.

A.2. The Contractor shall operate on a daily crossing schedule that ensures that users of the ferry services are not required to wait in excess of one-half (1/2) hour for service.

A.3. The State reserves the right to increase or decrease the hours of operations based upon the service usage pattern.

A.4. In order to provide for continuous service, the State reserves the right to request the Contractor to furnish substitute ferry equipment (tug and barge) during the time the State's ferry is out of service for repairs or dry docked for U.S. Coast Guard (USCG) inspection and repairs. The substitute ferry equipment shall meet all necessary (USGC), Federal and State requirements associated with Ferry Boat operations.

A.5. The Contractor shall perform all preventative maintenance related to the ferry operation including, but not limited to the following:

- a. Check fluid levels.
- b. Perform required lubrication.
- c. Provide all lubricants and fuel necessary for the operation of the ferry.
- d. Maintain the vessel in a clean and orderly state.

Contractor shall maintain record showing date and type of preventative maintenance performed.

- A.6. The Contractor shall maintain all safety equipment, as required by the USCG, in order to ensure operational readiness at all times of operation. In the event that such equipment requires repair or replacement, such repair or replacement shall be the responsibility of the Contractor.
- A.7. The Contractor shall furnish, install and maintain a radar unit acceptable for river navigation. The Captain on duty during hours of operation shall have proper USCG radar license and/or certification. Contractor will retain ownership of the radar unit at all times.
- A.8. During hours of operation, the Contractor shall furnish a minimum crew of two (2), a Captain and a Deckhand.
- A.9. The Contractor shall post in a conspicuous location and shall maintain all signs associated with the operation. These signs include, but are not limited to the following:
- a. A three (3) foot by four (4) foot sign on the ferry showing the name of the operating company (the Contractor), operator on duty, address and telephone number of the operating company. This sign shall be provided by the Contractor and shall require the prior approval of the State before posting.
 - b. A sign stating the fees for public usage. These signs shall be provided by the State.
- A.10. The Contractor shall not install or display any additional signs without the prior approval or the direction of the State.
- A.11. In the event that the Contractor should cease operations or interrupt scheduled operations for any reason, the Contractor shall immediately notify the Regional Engineering Director (or his designee) of the Department of Transportation by telephone at (615) 350-4300 that services have been halted or interrupted and give the reason services were halted and when services will resume.
- A.12. In the event of an occurrence affecting the safe operation of the vessel, an injury to the general public, a serious injury to the crew, vandalism or serious accident involving the crew and/or vessel, the Contractor shall immediately notify the Regional Engineering Director by telephone. Incidents of a lesser nature may be reported during the next working day.
- A.13. The Contractor and his personnel shall be polite, well mannered and shall present a clean and neat appearance to the general public at all times.
- A.14. The Contractor shall ensure that the Captain, Crew and other persons associated with the operations of the Ferry Service have the necessary United States Coast Guard certifications and licenses and meet all other Federal and State requirements associated with the operations of the vessel and the Ferry Boat operations throughout the term of the contract.
- A.15. In the event the Contractor elects to replace the Captain(s) of the vessel, the Contractor shall notify the State. The State reserves the right to approve such replacement.
- A.16. The Contractor shall comply with all Federal, State and Local Laws and ordinances addressing the operation, licensing and certification requirements associated with the operation and maintenance of a Ferry Boat and its crew.
- A.17. The Contractor shall be responsible for collecting all fees associated with the operation of the Ferry Service. These fees shall be deposited to the State's account and shall be set as follows:

a. Automobile, passengers and driver	\$2.00
b. Person, each on foot	\$0.50
c. Truck or bus (one (1) ton capacity and under) and driver	\$2.00
d. Truck or bus (one (1) ton capacity and over) and driver*	\$4.00
e. Automobile trailer	\$1.50
f. Truck trailer or bus trailer	\$3.00
g. Motorcycle and driver	\$2.00
h. All official governmental vehicles are exempt from paying any crossing fee.	

(Trailer fee will be in addition to the fee for the towing vehicle).

This Fee Schedule is the maximum rate allowable. The actual amount shall be set by the Commissioner of Transportation.

- A.18. The Contractor shall comply with all applicable statutes and guidelines concerning the collection and deposit of fees collected. The Contractor shall maintain all necessary and appropriate records to demonstrate full accountability of these fees.
- A.19. The Contractor shall be required to present the tug and barge to the USCG for inspection on an annual basis, and, if necessary, allow for required repairs. During the inspection and repair period, the Contractor shall receive no compensation
- A.20. The State shall provide the following commodities or services to the contractor:
1. The State shall maintain roadways, ramps, lights and provide all necessary permanent signs and pavement markings.
 2. The State shall furnish the Contractor with necessary signs for temporary closure of the ferry operation.
 3. The State shall provide all repairs and maintenance not specifically identified as a Contractor responsibility, including maintenance to all radio equipment.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2003 and ending on June 30, 2004. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Forty-Six Thousand and Nine Dollars and Fifty Cents. (\$346,009.50). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or

equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Payment Rates in Section C.3 and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rate:

<u>SERVICE</u>	<u>AMOUNT</u>
Ferry Boat Operation	\$76.50 Hourly Rate

The Contractor shall not be compensated for travel time to the primary location of service.

In the event that operations are halted due to equipment breakdown other than maintenance or required repairs as defined, high water, fog or some other force or major factor, the Contractor shall be compensated at a Stand-by Unit Rate of 50% of the hourly rate for the normal hours of operation during the first 48 continuous hours subsequent to the start of the cessation of operations. After the initial 48-hour period, the Contractor shall not be due any additional compensation until operations are resumed.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, be submitted typed on company letterhead and signed by the same company official executing the Contract, include a list the dates and number of hours of operation and dates and hours of non-operation and how the requested compensation was arrived at.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of

Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Carl Cobble, Transportation Manager 2
Tennessee Department of Transportation
400 J K Polk Building
Nashville, TN 37219-0333
Telephone: (615) 741-2027
Fax: (615) 741-5099

The Contractor:

H. Paul Richie
Two Rivers Excursions, Inc.
P. O. Box 602
Clarksville, TN 37041
Telephone: (931) 647-7181
Fax: (931) 647-1416

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, The Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.5. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

E.6. Performance Bond. Upon approval of the Contract by all appropriate State officials in accordance with applicable State laws and regulations, the Contractor shall furnish a performance bond in the amount equal to One Hundred Fifty Thousand Dollars and 00/100 (\$150,000.00), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the State and must be issued through a company licensed to issue such a bond in the State of Tennessee.

The Contractor shall obtain the required performance bond in form and substance acceptable to the State and provide it to the State no later than 7/21/03. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of One Hundred Fifty Thousand Dollars and 00/100 (\$150,000.00), may be substituted if approved by the State prior to its submittal.

E.7. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.

E.8. State Interest in Equipment—Uniform Commercial Code Security Agreement. The Contractor shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds \$5,000.00.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code—Secured Transaction, found at Title 47, Chapter 9 of the *Tennessee Code Annotated*, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the *Tennessee Code Annotated*, an intent of this Contract document and the parties hereto is to create and acknowledge a security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this Contract document. A further intent of this Contract document is to acknowledge and continue the security interest in

favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this program's prior year Contracts between the State and the Contractor.

The Contractor hereto grants the State a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Contractor hereby grants the State a security interest in said equipment. The Contractor agrees that the State may file this Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Contractor agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Contract in such form as the State may require to perfect a security interest with respect to said equipment. The Contractor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Contractor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment, including replacements and additions thereto. Upon the Contractor's breach of any covenant or agreement contained in this Contract, including the covenants to pay when due all sums secured by this Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Contractor agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment tag identification;
- d. Acquisition date, cost, and check number;
- e. Percentage of state funds applied to the purchase;
- f. Location within the Contractor's operations where the equipment is used;
- g. Condition of the property or disposition date if Contractor no longer has possession;
- h. Depreciation method, if applicable; and
- i. Monthly depreciation amount, if applicable.

The Contractor shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Contractor shall inventory equipment annually. The Contractor must compare the results of the inventory with the inventory control report and investigate any differences. The Contractor must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Contractor shall notify the State, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

The Contractor shall submit its inventory control report of all equipment purchased with the final invoice submitted under this Contract. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control.

Upon termination of the Contract, where a further contractual relationship is not entered into, or at

another time during the term of the Contract, the Contractor shall request written approval from the State for any proposed disposition of equipment purchased pursuant to this Contract. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services and in accordance with any applicable federal laws or regulations.

E.9. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.10. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.11. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.12. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.13. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract

shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

- E.14. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.15. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.16. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.17. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:

"NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

- E.18. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall

prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.19. Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

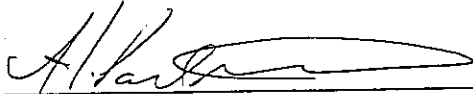
- E.21. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E.22. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

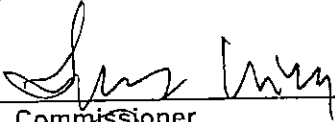
IN WITNESS WHEREOF:

TWO RIVERS EXCURSIONS, INC.:

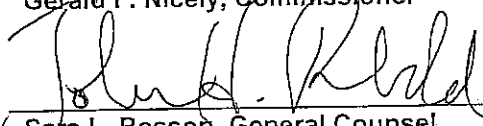

H. Paul Richie

6/17/03
Date

DEPARTMENT OF TRANSPORTATION:


Gerald F. Nicely, Commissioner

6/25/03
Date


for Sara L. Rosson, General Counsel

6/23/03
Date

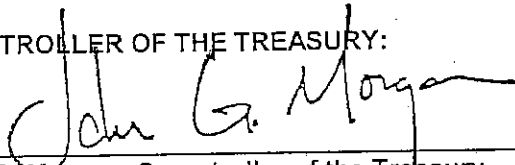
APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:


M. D. Goetz, Jr., Commissioner

6/30/03
Date

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury

7/1/03
Date



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

SUITE 400, JAMES K. POLK BUILDING
NASHVILLE, TENNESSEE 37243-0333
(615-741-2027)

GERALD F. NICELY
COMMISSIONER

February 11, 2004

PHIL BREDESEN
GOVERNOR

Mr. Paul Ritchie, President
Two Rivers Excursions, Inc.
P O Box 602
Clarksville, TN 37041-0602

Re: FA04-15321-00
Amendment to Contract
Ferry Boat Services – Stewart County
Two Rivers Excursions, Inc.

Dear Mr. Ritchie:

This is to advise that the subject contract will end on June 30, 2004.

Section B.2 CONTRACT TERM: B.2. of the subject contract states "The State reserves the right to extend this Contract for an additional two (2) years in one (1) year increments, provided the State notifies the Contractor of its intention to do so at least 90 days prior to the Contract expiration date".

This letter is to notify you of the Department's intent to extend this contract for the 2nd year of the original five (1) one year options for renewal. This extends the term of the contract from July 1, 2003 to June 30, 2005.

Please sign the enclosed five (5) copies of Amendment One, and return to Barbara Carnahan, TDOT, Maintenance Divn, Suite 400 J K Polk Bldg., 505 Deaderick St., Nashville, TN 37214-0333. We will begin the process of approval signatures for this renewal.

If there are any questions, please advise this office.

Sincerely,

A handwritten signature in black ink, reading "Carl E. Cobble", is written over the typed name.

Carl E. Cobble
Transportation Manager 2

Cc: Mr. Gerald Gregory
Mr. Mark Holloran
Mr. Kenneth Haile
Mr. Will Oliver